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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

**RECEIVED**

JUN 02 2004

XAVIER MARZE

:

OFFICE OF PETITIONS

SERIAL NO: 09/180,477

: ART UNIT: 1616

FILED: FEBRUARY 5, 1999

: EXAMINER: LEVY, N.

FOR: PROTECTION AGAINST TERMITES

:

Box: DAC  
Commissioner for Patents  
Washington, D.C. 20231

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS FIRST-CLASS MAIL WITH SUFFICIENT POSTAGE IN AN ENVELOPE ADDRESSED TO: BOX DAC; COMMISSIONER FOR PATENTS, WASHINGTON, D.C. 20231 ON THIS 26th DAY OF APRIL, 2002.

BY:

*Barbara J. Smith*

**PETITION TO REVIVE UNDER 37 CFR 1.137(b)**

Sir:

The applicants respectfully petition to revive the above-identified abandoned application on the ground that the abandonment was unintentional. 37 CFR 1.137(b).

The following are enclosed with this Petition:

1. A proposed response to the office action dated February 28, 2001, comprising an Amendment.
2. A copy of the Petition for Extension of Time which was filed on August 27, 2001 with a check for \$890.00 (which was the three month extension fee that was applicable at that time).
3. A check for the petition fee of \$1,280 (37 CFR 1.17(m)).



Docket No.: 05500-00098-US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:  
Xavier Marze

**RECEIVED**

**JUN 02 2004**

Application No.: 09/180,477

Confirmation No.: 6820

**OFFICE OF PETITIONS**

Filed: February 5, 1999

Art Unit: 1616

For: PROTECTION AGAINST TERMITES

Examiner: N. S. Levy

**Mail Stop Petition**

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

**RESUBMISSION OF PETITION TO REVIVE APPLICATION**

Dear Sir:

On April 26, 2002, Applicant filed a Petition to Revive the above-identified application on the grounds that it had been unintentionally abandoned. To date, applicant has not received a decision on this petition.


In response to a Status Inquiry that was filed by the applicants, the undersigned was recently advised by Examiner Levy (communication mailed from USPTO on May 21, 2004) that the Petition never made it to the file for the above-identified patent application. Accordingly, applicants are resubmitting the Petition to Revive and the papers that were associated with the Petition (Exhibit A), as well as a copy of the return postcard for these documents (Exhibit B) showing that the documents were received by the USPTO on May 6, 2002. Applicants are also enclosing, as Exhibit C, the canceled check (#14718) that was submitted with the Petition for Extension of Time (\$890.00, cashed by the USPTO on August 29, 2001) and the canceled check (#15834) that was submitted with the Petition to Revive (\$1,280.00, cashed by the USPTO on May 9, 2002). Accordingly, no additional fees should be due with this paper.

Applicant believes that no fee is due with this paper. However, if a fee is due, please charge our Deposit Account No. 03-2775, under Order No. 05500-00098-US from which the undersigned is authorized to draw.

Dated: May 25, 2004

CONNOLLY BOVE LODGE & HUTZ LLP  
1007 North Orange Street  
P.O. Box 2207  
Wilmington, Delaware 19899  
(302) 658-9141  
(302) 658-5614 (Fax)

Respectfully submitted,

By   
William E. McShane  
Registration No.: 32,707  
Attorney for Applicant

**FACTS RELEVANT TO THIS PETITION**

This application became abandoned (mailing date of Notice of Abandonment is October 24, 2001) for failure to respond to an office action. The abandonment was unintentional.

The responsibility for the present application was transferred to the present attorneys by another law firm in June of 2001. In August of 2001, before the end of the six month statutory term for response to the office action dated February 28, 2001, applicants filed a request for a Continued Prosecution Application and a Petition for Extension of Time (three months) along with the necessary filing fees and extension fees that were applicable at that time. Applicants believed that they were entitled to file such a Continued Prosecution Application since the filing date of the application was February 5, 1999, which is before the May 29, 2000 cutoff date under the new rules for filing Continued Prosecution Applications. However, through an oversight, the present attorneys were not aware that a Continued Prosecution Application of the present application had already been filed in October 2000 by the attorneys who were responsible for the application at that time, and that, therefore, applicants were no longer entitled to file a Continued Prosecution Application for the present application.

In late October of 2001, applicants received a Notice of Abandonment of the present application dated October 24, 2001. The Notice of Abandonment indicated that applicants had filed an improper Request for Continued Examination. Applicants contacted the Examiner about the Notice of Abandonment and advised the Examiner that they had never filed a Request for Continued

Examination but instead had filed a Continued Prosecution Application. On October 31, 2001, applicants filed a Request for Reconsideration in response to the Notice of Improper Request for Continued Examination, setting forth the history of the case as applicants understood it at that time. On March 7, 2002, applicants filed a Status Request because there had been no response to their Request for Reconsideration. In early April of 2002, applicants received a response to their Request for Reconsideration which, for the first time, advised applicants that another Continued Prosecution Application had been filed in October of 2000. Applicants investigated this allegation and determined that the Examiner was correct. Applicants then prepared the attached Amendment and this Petition to Revive the application.

#### **STATEMENT**

The entire delay in filing the required reply (i.e., a response to the office action) from the due date for the reply until the filing of the present Petition under 37 CFR 1.137(b) was unintentional.

#### **RELIEF REQUESTED**

Applicants request that this application be revived to pending status and that the enclosed Amendment be accepted and considered.

Since applicants already filed a timely Petition for Extension of Time in August 2001 and paid the applicable fees for a three month extension that were due at that time (see attached), it is respectfully submitted that no additional fees should be due at this time to extend the response period for the Office Action dated February 28, 2001. However, should any additional fees be necessary, the Commissioner is authorized to charge the deposit account of the undersigned


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attorneys, Deposit Account No. 03-2775.

If there are any additional fees due in connection with the filing of this Petition or the filing of the enclosed Amendment, the Commissioner is authorized to charge the deposit account of the undersigned attorneys, Deposit Account No. 03-2775.

Respectfully submitted,  
CONNOLLY BOVE LODGE AND HUTZ LLP

By: 

William E. McShane  
Registration No. 32,707  
Telephone: (302) 658-9141

WEM/197994

Enclosures: Amendment  
Copy of Previously filed Petition for Extension of Time (including check stub for \$890.00)  
Check for \$1,280 (petition fee)